Supreme Court, U.S.
FILED
JAN 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-971

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

In re: BERNARD J. DOLENZ, Petitioner

APPENDIX TO THE RESPONSE TO PETITION FOR A WRIT OF PROHIBITION, WRIT OF MANDAMUS, OR BOTH

BERNARD J. DOLENZ
6102 Swiss Avenue
Dallas, Texas 75214
(214) 821-0220

Petitioner, Pro Se

STEVEN L. PERRY
555 Colorado Avenue
Stuart, Florida 34995
(407) 287-2600

Counsel for Respondent

January 25, 1989

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 86-8384-CIV-ZLOCH

STUART YACHT BUILDERS, INC.,
a Florida Corporation,

Plaintiff,

vs. FINAL JUDGMENT

ARIES STARTREK, ENROLLMENT
NO. 555798, TOGETHER WITH
ALL TACKLE AND APPAREL,

Defendant.
_____/

THIS MATTER was tried before the Court, without a Jury, on March 16, 1987.

In addition, presently before the Court is a Motion For The Award of Costs and Attorneys' Fees (DE 33) filed herein by the Plaintiff, Stuart Yacht Builders, Inc.

Present for the bench trial on March 16, 1987 were counsel for the Plaintiff and Ms. Melissa Keyes. Ms. Keyes was accompanied by her counsel of record. Ms. Keyes had filed a Claim (DE 13) claiming that she was

the owner of the seized property. The Claim bore Ms. Keyes signature, was notarized and "sworn to."

Prior to the commencement of trial, Ms. Keyes stated in open court that she had transferred all of her ownership interest in the Defendant vessel to Mr. Bernard Dolenz on March 15, 1987. Ms. Keyes handed up to the Court a copy of the written "Assignment" dated March 15, 1987. She further stated that she had no further interest in said vessel. These representations were not disputed by her lawyer and indeed, formed the basis for the ore tenus Motion to Withdraw as counsel for Ms. Keyes and the Defendant vessel made by the law firm or Roberts & Reynolds in open court. This Court in its Order (DE 24) dated March 19, 1987, granted the ore tenus Motion to Withdraw.

As is reflected in this Court's prior Order (DE 24), at no time was Mr. Bernard

Dolenz present in court and at no time did any individual appear on his behalf. Ms. Keyes stated that she was not authorized to represent Mr. Dolenz or to speak on his behalf but that she had spoken with himover the course of the previous weekend and that Mr. Dolenz was aware of the date of trial and "hoped" for a continuance. At no time prior to trial did Mr. Dolenz or any representative of Mr. Dolenz request a continuance of the trial of this matter.

Ms. Keyes further advised the Court that Mr. Dolenz had not and did not wish to retain Ms. Keyes' counsel of record to represent the Defendant vessel in the above-styled cause. Ms. Keyes further stated to the Court that Mr. Dolenz would represent himself. Additionally, Ms. Keyes stated that she discharged the law firm of Roberts & Reynolds and Mr. Lyman Reynolds, Jr., Esquire, her counsel of record from any

further representatiton of her and the Defendant vessel in this cause.

This Court is not asked to pass upon the validity of the hand-written "Assignment" and no comment is made by the Court on that issue. However, assuming arguendo that the "Assignment" is valid, this Court notes that Bernard Dolenz had notice of this bench trial and for whatever reasons chose not to appear. Assuming arguendo that the "Assignment" is not valid, then Ms. Keyes was present and in court during the entire bench trial and for whatever reasons chose to discharge her lawyer and further chose not to proceed in the matter or to put on any testimony or evidence in support of her claim.

Accordingly, the Court proceeded with the bench trial of this cause, there being no good and sufficient reason to continue same.

The Plaintiff presented documentary evidence and testimony through witnesses, Mr. Gregory Burdick and Mr. Raymond Sees.

Subsequent to the bench trial, counsel for the Plaintiff filed Motion for The Award of Costs And Attorney's Fees (DE 33), attaching to said Motion as Exhibit "A" and itemization of all time spent and the charges for same; Exhibit "B", which is a supporting Affidavit for attorney's fees; Exhibit "C" an Affidavit with respect to time spent by counsel for the Plaintiff; and Exhibit "D" which is and Affidavit of Costs.

At the conclusion of the Plaintiff's case and after the Plaintiff rested, the Court called the case of the Defendant or any claimant. There was no response and no individual appeared in the courtroom on behalf of the Defendant and, although present in the courtroom during the entire proceeding, Ms. Keyes did not come forward and put on any testimony or evidence.

The Court notes that Bernard J. Dolenz represents himself to be a lawyer in the State of Texas as well as a medical doctor.

Based on the testimony presented by the Plaintiff, the documentary evidence received by the Court, and the Court having reviewed the court file makes the following Findings of Fact and Conclusions of Law. To the extent that any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such. Conversely, to the extent that any of the following Conclusions of Law constitute Findings of Fact, they are adopted as such.

FINDINGS OF FACT

1. Pursuant to the testimony at trial, the documentary evidence and the Claim (DE 13) filed by Melissa Keyes, the Court finds that Melissa Keyes at all times material was the owner of the vessel, Aries Startrek, and that all necessaries provided said vessel

were ordered by the owner or the owner's authorized agent.

2. Stuart Yacht Builders and Melissa Keyes entered into an agreement to perform services on the vessel Aries Startrek on July 1, 1985. (Plaintiff's Exhibit No. 3).

3. Stuart Yacht Builders agreed to dry dock the "Aries" at the rate of $216.00/month from 11-1-85 to 12-2-86 and $432.00/month thereafter. (Plaintiff's Composite Exhibit No. 6.)

4. The services were performed to return the vessel to proper navigational condition.

5. The services were performed in a workmanlike fashion and the time expended was reasonable.

6. All unpaid sums accrued interest at the rate of 18% per annum. (Plaintiff's Exhibit Nos. 3, Composite 6, and 19.)

7. On July 3, 1986 process of warrant for arrest of the "Aries" its tackle and apparel, was issued.

8. On July 10, 1986 process was served on the vessel and its tackle by the U.S. Marshal and custody relinquished to Greg Burdick as Court Appointed Substitute Guardian.

9. As substitute custodian, Stuart Yacht Builders provided maintenance, storage, security and bookkeeping services for the "Aries."

10. In accordance with the work authorization, Stuart Yacht Builders provided Ship Repair Liability Insurance for the "Aries." (Plaintiff's Exhibit Nos. 3 and Composite 6.)

11. In accordance with the work authorization, Stuart Yacht Builders provided Hull Liability Insurance for the "Aries." (Plaintiff's Exhibit Nos. 3, Composite 6 and 19.)

12. In accordance with this Court's Order of July 3, 1986 appointing Stuart Yacht Builders Substitute Custodian, Hull

Liability Insurance was provided for the "Aries." (Plaintiff's Exhibit Nos. Composite 6 and 19.)

13. As Substitute Custodian, Stuart Yacht Builders paid all storage charges for the warehouse containing the "Aries" tackle and apparel. (Plaintiff's Exhibit Nos. Composit 6 and 19.)

14. The "Aries Startrek" is a vessesl within the meaning of 46 U.S.C. Section 971.

15. No testimony or physical or documentary evidence was presented by the Defendant or any Claimant.

16. The Court finds that the following costs incurred by the Plaintiff, through its attorney are authorized by law:

Clerk, United States District Court - Filing custodial bond	$ 500.00
United States Marshal Arrest vessel	1,000.00
Marshal's Ins. and fees	1,000.00

Stuart News Notice of Publication	22.10
TOTAL	$2,522.10

CONCLUSIONS OF LAW

1. This Court has jurisdiction pursuant to 28 U.S.C. Section 1333.

2. This is an Admiralty and Maritime Claim within the meaning of Rule 9(h).

3. The Plaintiff is a corporation doing business in the Southern District of Florida.

4. The vessel subject to this action is within the jurisdiction of this Court and the court has jurisdiction over same.

5. The "Aries Startrek" is a vessel within the meaning of 46 U.S.C. Section 971.

6. The services, repairs, drydock and necessaries furnished by the Plaintiff are within the scope of 46 U.S.C. Section 971.

7. The services, repairs, drydock and necessaries were furnished by the Plaintiff

upon the authority of a person within the scope of 46 U.S.C. Section 972.

8. A rebuttable presumption of a maritime lien is created by the furnishing of necessaries ordered by the owner or the owner's authorized agent. Belcher Oil Company v. M/V Gardenia, 766 F.2d 1508 (11th Cir. 1985); 46 U.S.C. Section 971.

9. The Defendant and the owner (Claimant) have not overcome the rebuttable presumption of a maritime lien and have failed to satisfy their burden of proof in establishing that the providing of the necessaries was not authorized to bind the vessel or the owner.

10. The Plaintiff is entitled to a maritime lien pursuant to 46 U.S.C. Section 971 and to a judgment foreclosing the lien.

11. The Plaintiff is entitled recover reasonable custodia legis expenses.

12. Absent some statutory authorization, the prevailing party in an admiralty case is not generally entitled to an award of attorneys' fees. Noritake Co., Inc. v. M/V Hellenic Chamption, 627 F.2d 724 (5th Cir. 1980) Therefore, no attorneys' fees will be awarded to the Plaintiff in this matter.

Accordingly, it is

ADJUDGED that the Plaintiff, Stuart Yacht Builders, Inc., a Florida corporation, shall recover against the Defendant, Aries Startrek, Enrollment No. 555798, Together with All Tackle And Apparel, the following sums:

a) Sales tax with interest due through 3/16/87	$1,719.61
b) Repair ins. with interest due through 3/16/87	477.87
c) Hull ins. with interest due through 3/16/87	3,904.83
d) "Mini Bay" storage with int. due through 3/16/87	882.67
e) Storage charges with int. due through 3/16/87	7,085.72

f) Labor and material with int. due through 3/16/87	22,307.08
g) Additional costs incurred as Substitute Custodian	
i) routine maintenance	952.00
ii) bookkeeping expenses	420.00
h) Court costs	2,522.10
TOTAL DUE THROUGH TRIAL - 3/16/87	$38,899.88

IT IS FURTHER ADJUDGED that prior to the time set for sale below, the vessel may be redeemed by paying a total of the sums due to the Plaintiff, together with interest at the rate of twelve (12%) percent per annum and all costs of this action accruing subsequent to this Judgment. If the Plaintiff is not paid prior to the time set for the sale, then the Marshal of This Court shall sell the vessel on the ____ day of ____ __, 1988, at ____ o'clock _.m. to this highest bidder for cash, except as set forth hereinafter.

Prior to the above-referenced sale date, the Marshal shall have filed with This Court

and provided a copy to counsel of record, proof of compliance with Local Rule 4 regarding publication of the Notice of Sale. Upon holding the sale, a single Certificate of Sale, Certificate of Title and Certificate of Disbursement shall be filed as to the vessel sold and the proceeds of the sale shall be applied to the Judgment of Record and to satisfy any costs incurred by the Plaintiff subsequent to the Judgment. In the event that there is an excess above and beyond the Judgment and costs, this amount shall be placed in the registry of the Court to be disbursed upon the appplication of the individuals claiming to be the owners of the vessel at the time this Judgment was entered.

IS FURTHER ADJUDGED that the Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if the Plantiff is not the purchaser of the vessel. If the

Plaintiff is the purchaser of the vessel, the clerk shall credit the Plaintiff's bid with the total sums due pursuant to the Judgment together with interest and anycosts incurred subsequent to judgment.

On the filing of the Certificate of Title, all named Defendants to this action and all persons claiming under or against those Defendants since the filing of the original Proof of Publication in this action shall be foreclosed of all claims and interest in the vessel the "Aries Startrek" as fully described in the Certificate of Title, and the purchaser at the sale shall be let in possession of the vessel.

IT IS FURTHER ADJUDGED that jurisdiction of ths action is retained for the purpose of entering such further Orders as may be necessary and proper including with limitation writs of possession.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 16th day of February, 1988.

WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

Steven L. Perry, Esquire

Melissa Keyes
c/o Turks Island Divers
Hotel Kittina
P.O.Box 42, Grand Turk
Turks and Caicos, British West Indies
or

P.O. Box 281
Deltaville, Virginia 23043
or

6868 Southeast Gaines Avenue
Stuart, Florida 34997
or

816 Southeast Ninth Street
Deerfield Beach, Florida 33441
or

Box 266781, West Oakland Park Blvd.
Fort Lauderdale, Florida 33311

U.S. Marshals Service

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 86-8384-CIV-ZLOCH

STUART YACHT BUILDERS, INC.,
a Florida corporation,

Plaintiff,

vs. ORDER

ARIES STARTREK, Enrollment
No. 555798, together with
all tackle and apparel,

Defendant.

_____/

THIS MATTER is before the Court upon the Motion for Intervention (DE 25), the Motion To Dismiss and Motion To Reconsider (DE 27) and the Motion for Sanctions (DE 35) filed herein by Bernard Dolenz and the Court having reviewed the merits of said Motions, having reviewed the court file and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. The Motion For Intervention (DE 25) filed herein by Bernard Dolenz be and the same is hereby DENIED;

2. The Motion to Dismiss And Motion to Reconsider (DE 27) filed herein by Bernard Dolenz be and the same is hereby DENIED; and

3. The Motion for Sanctions (DE 35) be and the same is hereby DENIED.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 25th day of September, 1987.

WILLIAM J. ZLOCH
United States District Judge

Copies furnished:
Bernard Dolenz,
Stephen Perry, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 86-8384-CIV-ZLOCH

STUART YACHT BUILDERS, INC.,
a Florida corporation,

Plaintiff,

vs. ORDER

ARIES STARTREK, ENROLLMENT
NO. 555798, TOGETHER WITH
ALL TACKLE AND APPAREL,

Defendant.
_____/

THIS MATTER is before the Court upon the Motion To Substitute Parties (DE 53) and the Motion to Extend Time to Appeal (DE 54) filed herein by Mr. Bernard J. Dolenz.

This Court further notes that Mr. Bernard J. Dolenz has filed a Notice Of Appeal, appealing the Final Judgment (DE 51) previously entered herin. Although this Court may not have jurisdiction over the Motions aforementioned, for the benefit of the reviewing court, this Court will

consider and rule upon the Motions aforementioned.

This Court notes the inconsistencies in the statements of Mr. Bernard J. Dolenz which have plagued this case. For example, the Court notes that in Mr. Dolenz's Motion to Substitute Parties (DE 53), Mr. Dolenz states in Paragraph No. 2 that Melissa Keyes assigned her ownership interest in the Defendant vessel to Mr. Dolenz as of March 15, 1987, said assignment being received in Dallas, Texas. Mr. Dolenz then turns right around and in an Affidavit attached to his Motion to Extend Time to Appeal (DE 54), he states that there was an oral agreement for an assignment of all of the rights of the Defendant vessel March 15, 1987, the written assignment not being received by Mr. Dolenz until on or about March 26, 1987 in Dallas, Texas. In his Affidavit, Mr. Dolenz goes on to express the view that Melissa Keyes had

"equitable title" to the vessel at the time of the final hearing on March 16, 1987.

In a Motion For Sanctions (DE 35) filed by Mr. Dolenz, Mr. Dolenz states in Paragraph No. 1 of that Motion that Melissa Keyes transferred her interest in the vessel through her agent on March 14, 1987 in Dallas, Texas. The Court further notes that in a Motion To Dismiss (DE 28) filed by Mr. Dolenz, he states on Page 2 of that Motion that Melissa Keyes had equitable title to the Defendant vessel March 16, 1987 as the assignment to Bernard Dolenz had not been delivered to him or his attorney.

The Court in its Final Judgment did not make any determination of the validity of the alleged asignment from Melissa Keyes to Bernard Dolenz. However, the Court points out that the action in this case is an action in rem to enforce a maritime lien. The Defendant in the case is the vessel, Aries Startrek, not Melissa Keyes.

Therefore, any assignment of interest in the vessel had no effect on the initial in rem action against the Defendant vessel. The vessel at all times material has been in the Southern District of Florida and the Court has never lost in rem jurisdiction of the Defendant vessel.

The court file and the record clearly reflect the actions that have been engaged in by Melissa Keyes and Bernard Dolenz with respect to this proceeding. This Court is concerned with the good faith on the part of Melissa Keyes and/or Bernard Dolenz with respect to the forward progress of a case to final hearing. The above-styled cause was originally noticed for Calendar Call for February 20, 1987 by Order (DE 16) dated February 3, 1987. The Minutes (DE 18) from the Calendar Call reflect both sides as "ready" for trial. The Final Hearing commenced on March 16, 1987. Therefore, there was plenty of advance notice given to

the parties with respect to the Final Hearing.

If parties are allowed to engage in such "surprise tactics" as the maneuvers seen in this proceeding by Ms. Keyes and Mr. Dolenz, then it is conceivable that a case would never get to Final Hearing.

This Court has carefully considered the merits of the Motion to Substitute Parties (DE 53) and Motion To Extend Time To Appeal (DE 54). The Court finds no excusable neglect as a basis to extend the time to appeal.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that the Motion to Substitute Parties (DE 53) and the Motion to Extend Time to Appeal (DE 54) be and the same are hereby DENIED.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 22nd day of April, 1988.

WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

Counsel of Record and Individuals
on attached mailing list.

STUART YACHT BUILDERS, INC. v. ARIES STARTREK, Etc., CASE NO. 86-8384-CIV-ZLOCH

Steven L. Perry, Esq.,
for Plaintiff
Post Office Drawer 24
Stuart, Florida 34995-0024

Melissa Keyes
c/o Turks Island Divers
Hotel Kittina
P.O. Box 42, Grand Turk
Turks and Caicos, British West Indies
or

P.O. Box 281
Deltaville, Virginia 23043

or
6868 Southwest Gaines Avenue
Stuart, Florida 34997

or

816 Southwest Ninth Street
Deerfield Beach, Florida 33441

or
Box 266781, West Oakland Park Blvd.
Fort Lauderdale, Florida 33311

Bernard J. Dolenz
6102 Swiss Avenue
Dallas, Texas 75214

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 88-5360

STUART YACHT BUILDERS, INC.,

Plaintiff-Appellee,

versus

ARIES STARTREK, Enrollment No. 555798, together with all tackel and apparel,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

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Before RONEY, Chief Judge, HATCHETT and ANDERSON, Circuit Judges.

B Y T H E C O U R T:

The appeal is dismissed for lack of jurisdiction because the notice of appeal was untimely. Fed.R.App.P 4(a)(1); Campbell

v. Wainwright, 726 F.2d 702, 703 (11th Cir. 1984). Lack of notice of the entry of an order or judgment by the clerk does not affect the time to appeal. Fed.R.Civ.P. 77(d). Furthermore, the district court denied appellant's motion for extension of time to appeal. Fed.R.App.P. 4(a)(5).

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 87-5862

IN RE:

BERNARD J. DOLENZ,

Petitioner.

(Filed October 21, 1987 in the U.S. Court of Appeals, Eleventh Circuit by Miguel J. Cortez - Clerk).

On Petition for Writ of Mandamus to the United States District Court for the Southern District of Florida

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Before HILL and FAY, Circuit Judges.

The Petition for Writ of Mandamus is denied.

AGENT

Form approved
Budget Bureau No. 48-R1816.

MASTER CARPENTER'S CERTIFICATE
(BUILDER'S CERTIFICATE)

PLACE: Taipei, Taiwan Republic of China | DATE: Dec. 31, 1968 | NAME OF MASTER OR PRINCIPAL CARPENTER: Y. Chen, Taiwan Yacht Industries, Inc.

ADDRESS: No. 4 Nanking E. Road, Sec-1, P.O. Box 1313, Taipei, Taiwan, Republic of China

RIG[1]: Ketch Rig

NAME OF THE VESSEL[2]: QUICKSTEP II | HULL NO.: 8

VESSEL WAS BUILT (*Insert "By me," "Under my direction," or "By ..... " giving firm or corporate name, if applicable*): Taiwan Yacht Industries, Inc.

YEAR OF COMPLETION: 1968 | PLACE WHERE BUILT[3]: Taipei, Taiwan, Republic of China | MATERIAL OF BUILD[4]: Wood

NAME OF PERSON OR PERSONS FOR WHOM BUILT AND INDIVIDUAL INTEREST OWNED

Bayard L. Kilgour, III
4500 Drake Road
Cincinnati
Ohio 45243
U. S. A.

NUMBER OF DECKS	NUMBER OF MASTS	CONTOUR OF STEM	SHAPE OF STERN
one	two	raked stem	transom

LENGTH OF VESSEL[5]	BREADTH OF VESSEL[5]	DEPTH OF VESSEL[5]
approx. 72' — TENTHS — FEET	30' — TENTHS — FEET	5' — TENTHS — FEET

GROSS TONNAGE: 110,000 lbs. without equipment | NET TONNAGE:

[1] Insert here the rig of the vessel. For a vessel having a steam engine write "steam side wheel," "steam stern wheel," "steam screw"; and for a vessel having an internal combustion engine write "gas (or oil) side wheel," "gas (or oil) stern wheel," "gas (or oil) screw," or as the case may be.
[2] The name given herein shall be in exact agreement with the lettering as marked on the vessel itself.
[3] Write the name of the city or town at or nearest to which the vessel was built, and include the name of the state and country.
[4] Insert "wood," "iron," "steel," or as the case may be.
[5] Dimensions are to be calculated as specified in R.S. 4150.

THE FOLLOWING ADDITIONAL PARTICULARS SHALL BE GIVEN FOR THE ENGINE OF MACHINERY-PROPELLED VESSELS

TYPE OF ENGINE (*Reciprocating, beam, turbine, etc., if steam, oil, gas, etc., if internal combustion*): not installed

PLACE WHERE BUILT | YEAR BUILT

BUILT BY

POWER (*Steam, heavy oil, light oil, gasoline, naphtha, etc.*)

NOTE.—An *oil* engine is an internal-combustion engine in which the fuel is injected into the air that is under compression in the cylinder, the combination is ignited by the heat generated from the compression (Diesel type), or from additional outside heat when that in the cylinder is not sufficient (Semi-Diesel type). A *gas* engine is also an internal combustion engine, but in it the fuel and air are admitted into the cylinder simultaneously and the combination is ignited by a spark.

I certify that the information given above is true and correct to the best of my knowledge and belief.

The master carpenter or builder shall not sign this certificate until he knows that the name as above written agrees *exactly* with that marked on the vessel.

TAIWAN YACHT INDUSTRIES, INC.

SIGNATURE OF MASTER CARPENTER OR BUILDER

CUSTOMS FORM SEPT 62 1261

Y. Chen

BEST AVAILABLE COPY

A TRUE COPY OF THE LAST CONSOLIDATED CERTIFICATE OF ENROLLMENT AND YACHT LICENSE

Permanent or Temporary	The United States of America	Official No.	
PERMANENT		555798	
Certificate No. [illegible]			

Measured at Miami, Fla ....., 19 73

Rebuilt at ....., 19.....

Remeasured at ....., 19..... Horsepower 260

CONSOLIDATED CERTIFICATE OF ENROLLMENT AND YACHT LICENSE

LICENSE OF YACHT UNDER TWENTY TONS

In conformity to Title L, "Regulation of Vessels in Domestic Commerce," and Chapter Two, Title XLVII, "Regulation of Commerce and Navigation," of the Revised Statutes of the United States, and to "An act to amend Sections 4214 and 4218 of the Revised Statutes Relating to Yachts," approved August 29, 1912

Joyce G Castilloux (460-46-7427) of 193 SE Riverbend St, Stuart, Fla 33494, Managing owner

having taken and subscribed the oath ..... required by law, and having sworn ..... that

Joyce G Castilloux, Philip J Castilloux, Steven J Castilloux
Keith E Castilloux, Connie J Castilloux, Philip J Castilloux
Joint tenants with owner equal shares with right of survivorship
193 SE Riverbend St , Stuart, Fla 33494

This vessel shall not engage in the coastwise trade or the American fisheries

are citizens of the United States and the sole owner of the vessel called the

Wahini (ex-Wickstep II) ..... of West Palm Beach, Fla

and that the said vessel was built in the year 1968 at /Taipei, Taiwan of wood

as appears by Certificate of Y Chan, Master Carpenter of Taiwan Yacht Industries, Builder

and L. J. Karlin, Admeasurer having certified that

the said vessel is a oil catamaran ; that she has

one deck , two masts , a raked stem, and a round stern; that her

register length is 67.0 feet, her register breadth 30.0 feet, her register depth 10.8 feet,

her height feet; that she measures as follows:

	Tons	Hundredths
Capacity under tonnage deck	75	47
Capacity between decks above tonnage deck		
Capacity of enclosures on the upper deck, viz: Forecastle ; bridge ; poop ; trunk ; house—deck / 67.0 ; mast ; trunks ; engine hatchways ; light and air ;	10	88
Gross Tonnage	86	35
Deductions under Section 4153, Revised Statutes, as amended (Sec. 77, title 46, U.S. Code):		
Crew space, ; master's cabin, ;		
Steering gear, ; anchor gear, ; boatswain's stores ;		
Chart house, ; donkeys engine and boiler, ; radio room, ;		
Storage of sails, ; propelling power (actual space 6.84), 32/100 ;	16	84
Total Deductions	69	
Net Tonnage		

The following-described spaces, and no others, have been omitted, viz: Forepeak , afterpeak , other spaces (except double bottoms) for water ballast ; open forecastle , open bridge , open poop , open shelter deck , open houses , cabins , companions 64, galley , skylights , wheelhouse , water closets ; anchor gear , donkey engine and boiler , steering gear , light and air spaces , other machinery spaces ,

and [illegible], the officer, having agreed to the description and measurement above specified, the said vessel has been duly ENROLLED at the PORT;

And [illegible], the master, having sworn that he is a citizen of the United States, that this vessel, used and employed exclusively as a PLEASURE VESSEL or designed [illegible] model of naval architecture, shall not, while this license continues in force, transport merchandise or carry passengers for hire, or engage in any unlawful trade, nor in any way violate the revenue laws of the United States, and shall comply with the laws in all other respects:

LICENSE is hereby granted for the said YACHT to proceed from port to port in the United States without entering or clearing at the customhouse, and to foreign ports without clearing in the United States. This LICENSE will continue and be in force for ONE YEAR from the date hereof, and no longer.

Given under my hand and seal at the Port of West Palm Beach, Florida

District of [illegible] this 28th day of May

in the year one thousand nine hundred and seventy four

Signed Jack F Starkey
Jack F STARKEY, Documentation Officer
by Direction

Strike out title if vessel is licensed only. Strike out this and following line, if vessel is licensed only.

Strike out "Treasury Department" or "Department of Transportation" as appropriate.

Strike out "U.S. Customs Service" as appropriate

Strike out "Documentation Officer" as appropriate

65

BEST AVAILABLE COPY

DEPARTMENT OF TRANSPORTATION
U.S. Coast Guard
CG 1340 (Rev. 5-87)

BILL OF SALE

OMB APPROVED
2135-0110

1. VESSEL NAME

ARIES STARTREK

2. OFFICIAL NUMBER

535798

3. NAME(S) OF SELLER(S) AND INTEREST OWNED BY EACH

JOYCE G. CASTILLOUX, PHILIP E. CASTILLOUX & KEITH M. CASTILLOUX surviving tenants of a joint tenants, each owning equal shares with right of survivorship 100%

4. NAME(S) OF BUYER(S) AND INTEREST TRANSFERRED TO EACH

5. CONSIDERATION RECEIVED

Ten Dollars ($10.00) & other good and valuable considerations

6. I (we) do hereby sell to the buyer(s) named above, my (our) right, title, and interest in the vessel together with the following necessaries and appurtenances:

This sale is made to the buyers on the proportion specified, subject to the following warranties and conditions: The Seller warrants that the vessel is free and clear of all liens, bills, mortgages, taxes or encumbrances of any nature or kind and hereby agrees to indemnify and save harmless the purchaser against and from any and all claims arising by reason of anything happening or occurring prior to date hereof and all expense in connection therewith.

7. SIGNATURE(S) OF SELLER(S)

By: Keith M. Castilloux
Joyce G. Castilloux By: Philip E. Castilloux

8. DATE

9. CAPACITY

10. ACKNOWLEDGEMENT (Insert such acknowledgement language as is required by state law.)

State of Hawaii County of Hawaii

BE IT KNOWN, That on this 6th day of August, 19 85, Personally appeared Joyce G. Castilloux & Philip E. Castilloux, to me known and known to me to be the person/s who signed his/her/their name (s) to the within instrument, and acknowledged the same to be his/her/their free act and deed.

IN WITNESS WHEREOF, I have hereby set my hand and seal this 6th day of August A.D., 19 85

SEAL

My commission expires: 8-6-89 (ALSO SEE REVERSE)

Anna M. Ajona
Notary Public

The acknowledgement may not be taken by an officer or employee of the Coast Guard.

1/If vessel has never been awarded an official number, complete those items of vessel data on reverse of form as are known.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

STUART YACHT BUILDERS, INC.,)

vs. CASE NO. 88-971

Aries Startrek together with
all tackle and apparel.

Defendant.

_____/

TRIAL TRANSCRIPT

Before the HONORABLE WILLIAM J. ZLOCH,

United States District Judge.

APPEARANCES OF COUNSEL:

For the Plaintiff:

Crary, Buchanan, Bowdish & Bovie
BY: Steven L. Perry, Esquire
and Robert L. Lord, Jr., Esquire
555 Colorado Avenue, Suite One
Stuart, Florida 34994

For the Defendant Keyes:

REYNOLDS & ROBERTS
BY: Lyman H. Reynolds, Esq.
319 Clematis Street
West Palm Beach, Florida

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305-476-0723

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Gregory Burdick	19			
Raymond Seese	30			

P R O C E E D I N G S

THE DEPUTY CLERK: Calling case 86-8384-Civ-Zloch, Stuart Yacht Builders, Inc. versus Aries Startrek together with all tackle and apparel.

Counsel, please, state your appearance for the record?

MR. PERRY: Steve Perry and Robert Lord on behalf of the Plaintiff.

THE COURT: Good morning.

MR REYNOLDS: Lyman Reynolds and Bill Zidno on behalf of the Defendants.

THE COURT: All right, Mr. Reynolds, you wanted to address the Court, sir?

MR. REYNOLDS: Yes, sir.

As I have apprised Your Honor's staff since Friday when we were apprised of this case going to trial today on Monday, we have been trying to get ahold of our client, the owner of the Aries Startrek, Ms. Keyes.

I spoke with your secretary on Friday and again this morning at 8:30 I spoke with your

secretary and the Clerk Deputy at 8:30 with regard to our inability to locate Ms. Keyes.

At 9:15 as we were preparing to leave for court here this morning Ms. Keyes called from the courthouse here to inform me that she was here and she had received a message that we had left throughout all of here known addresses, acquaintances, associates.

However, at that time for the first time she informed me that she no longer owned the Aries Startrek.

I would point out to Your Honor that she had filed an affidavit of ownership and had hired my firm to represent her in this matter.

THE COURT: Hold on for a minute.

MR. REYNOLDS: That was filed in August, Your Honor.

THE COURT: Docket entry 13 in the court file is a claim of Melissa Keyes which states in paragraph one, "Melissa Keyes is the owner of seized property identified as

Aries Startrek enrollment number and it is 555798 together with all tackle and apparel of said vessel."

Paragraph two reads in part: "Melissa Keyes is the owner of the aforementioned vessel and any of the tackle, apparel, appurtenances and other equipment in possession of the Plaintiff."

Paragraph three reads in its entirety: "Melissa Keyes, as the owner of the Aries Startrek, and its tackle and appurtenances, apparel and equipment demands its restitution and the right to defend this action."

Then there is a signature line which purports to bear the signature of an individual identified as Melissa Keyes and then it is sworn to and subscribed on the first day of August, 1986, bearing the impression seal of a notary public of the State of Florida by the name of Lori Ann Bielak and there is a signature line which

purports to bear the signature of an individual by the name of Lori Ann Beilak.

That is docket number 13 in the court file.

There is nothing else in the court file that indicates that Melissa Keyes is not the owner of the Aries Startrek and the claim that I earlier refered to, docket entry number 13, has not been modified or withdrawn by and pleading or motion filed in the court files as of right now.

And you, Mr. Reynolds, you were informed when, sir, that Ms. Keyes, in facts, does not, at least you were told that she does not own the vessel in question?

MR. REYNOLDS: I was told by Melissa Keyes this morning at 9:15 when she contacted my office from the courthouse telling me that she had received the message about the proceedings this morning. "And there is something else I need to tell you, I no longer own the Aries Startrek. It has

been transferred to an individual in the State of Texas."

THE COURT: When did that transfer of ownership take place?

MR. REYNOLDS: Well, I have an assignment of interest dated March 15, 1987, which was handed to me at a quarter of 11:00 this morning, twenty minutes ago by Ms. Keyes.

Ms. Keyes is here and can testify with regard to her lack of ownership, what her representations to me in that regard have been and my knowledge that for the first time I am no longer retained by the owner of the vessel.

The individual, Bernard Dolenz, is in Dallas, Texas. He is an attorney there. I have been informed by Ms. Keyes that he wants to represent himself on behalf of the boat in this action and I have not been retained nor has my firm been retained by Mr. Dolenz in this action.

THE COURT: Is Ms. Keyes in the courtroom?

THE REYNOLDS: Yes,sir.

THE COURT: Are you Ms. Keyes?

MS. KEYES: Yes, sir.

THE COURT: All right, go ahead, Mr. Reynolds.

MR. REYNOLDS: It would be my request on behalf of our firm that we be, it's moot, we are no longer representing the vessel. We have not been retained by the true owner of the vessel.

We have just learned of this and would have filed a motion to that effect earlier with the Court if we had been apprised of it any earlier than today.

I have been informed that Mr. Dolenz does not want to retain our firm to represent him in this matter on behalf of the vessel. He wishes to represent himself as an attorney and would want to be substituted as counsel and that he wants to continue the action in

order for him to adequately defend the action and with regard to a continuance in this matter I would simply want to point out to the Court that--

THE COURT: You are not authorized to make any motion for continuance on behalf of the new owner; are you?

MR. REYNOLDS: No Sir. He has not retained me for that purpose. This was just given to me by Ms. Keyes that that was his desire. I have not spoken with Mr. Dolenz at all with regard to this matter.

The position with regard to a continuance in this case would be, I assume, the fact that we have $180,000 vessel which is owned outright except for this action.

This action in the complaint seeks $26,000 in material, man, wharfage and other propert maritime lien action. It's not an impersonam action at all. And the value of the vessel is, at least, five times the value of the claim against it.

Therefore, there would not be any prejudice in allowing Mr. Dolenz his continuance of this matter to the plaintiff.

But as Your Honor has correctly pointed out, Mr. Dolenz, has not authorized me to make that motion on his behalf.

I have been retained in no way by him.

However, that desire has been passed on to me by Ms. Keyes.

THE COURT: All right, let me hear from Ms. Keyes.

MR. REYNOLDS: Do you want her to take the stand?

THE COURT: I would like her to step up to the podium.

Ma'am, state your name for the record?

MS. KEYES: My name is Melissa Keyes.

THE COURT: Mr. Reynolds, with respect to the assignment of ownership or what was the document that your referred to?

MR. REYNOLDS: This is a handwritten notice of assignment of interest in Aries Startrek.

THE COURT: May I see that, please?

Ms. Keyes, explain to me what the document is that you have there?

MS. KEYES: Well, sir, Mr. Dolenz has been a partner of mine on this boat for several months now. I showed it to him just after Christmas and he loved the boat and he wanted to buy an interest in it which he did and paid me.

And not being very well prepared for this case as I have been trying to settle out of court until just the day before, I don't know the term, the day before the court date was set. This weekend, I heard Saturday that I was going to have court today and I talked to Mr. Dolenz and we agreed that I would assign him full ownership of the boat or all the rest of my interest in the boat.

THE COURT: When was that decided on?

MS. KEYES: We discussed it Saturday and Sunday and decided on Sunday.

THE COURT: I'm sorry, which dates? You say Saturday and Sunday. Specifically, which dates?

MS. KEYES: The 14th and 15th.

THE COURT: Of March?

MS. KEYES: Yes, sir.

THE COURT: of 1987?

MS. KEYES: Yes sir.

THE COURT: This past weekend you decided to transfer your ownership to Mr. Dolenz?

MS. KEYES: That's correct.

THE COURT: For consideration?

MS. KEYES: Yes, sir.

THE COURT: And what was the consideration?

MS. KEYES: The considerations are that I will be the captain of the boat and perhaps in the future I can buy back into the ownership of the boat.

THE COURT: What is the date on that handwritten assignment?

MS. KEYES: March 15.

I was unable to fly back to Texas to do this and discussed everything on the telephone. He wanted to try to call you this morning. He's in court also.

THE COURT: Well, is he flying in for the trial.

MS. KEYES: He was unable to fly in today.

THE COURT: What arrangements is he making to fly in for the trial?

MS. KEYES: I haven't discussed that with him. He definitely wants to represent himself.

THE COURT: I am sorry, I thought that you discussed with him the fact that you weren't prepared to go to trial. I thought that is what you indicated to me?

MS. KEYES: That he was not able to get out of his obligations today. He has a court case today.

THE COURT: I am sorry, say that again?

MS. KEYES: He has a court case himself. He was unable to get out of his obligations to fly up here today for the trial today. It was--everything was such at the last minute.

THE COURT: Are you Mr. Dolenz's representative here in Court today? Are you his authorized representative?

MS. KEYES: Yes. Not to try the case, no.

THE COURT: Did Mr. Dolenz tell you that you were his authorized representative to come into this courtroom, in this federal building, into this United States District Courtroom and to represent him?

MS. KEYES: He didn't say that, no, sir. He said he wanted to represent his interest in the boat.

THE COURT: Did he authorize you to come into this courtroom today and to speak on his behalf?

MS. KEYES: No, sir.

THE COURT: Well, are you authorized to ask for a continuance of this trial on his behalf?

MS. KEYES: Yes.

THE COURT: what did he tell you with respect to that?

I mean, I would be interested in knowing specifically what he said to you?

MS. KEYES: He specifically, he was unhappy that-- he was unhappy that we were unable to settle with the boatyard before the case came up. We were trying all along to settle.

THE COURT: I believe Mr. Reynolds has indicated that, that he had been engaging in or the parties had been engaging in serious settlement discussions?

MS. KEYES: Yes, sir.

Mr. Dolenz didn't mention anything to me about myself representing his interest in the boat. He was hoping for a continuance so that he could properly prepare it.

THE COURT: Mr. Perry, do you have any questions?

MR. PERRY: No, Your Honor, I don't.

THE COURT: Ms. Keyes, am I pronouncing the last name correctly?

MS. KEYES: Yes, sir.

THE COURT: Is Mr. Dolenz retaining Mr. Reynolds and his firm to defend him in this action?

MS. KEYES: No, he won't.

THE COURT: All right, thank you, Ms. Keyes.

All right, Mr. Perry, what does the Plaintiff say about all this?

MR. PERRY: Your Honor, I know Lyman fairly well and I don't think there is any plan in this to, on his behalf at all to delay the case.

I do believe that he is not representing the owner. He lacks any capacity to represent them in court. Ms. Keyes obviously no longer has standing before this Court. The only possible procedure that we could probably undertake would be a rule 56 motion here now or to present evidence by affidavit later.

I don't see the point in going through a half a day's worth of trial when, in essence, we are in a default position.

Now I agree with Lyman that the continuance probably would not hurt my client in terms of the value of the collateral here. But he has been waiting for over a year and a half to recover. That it continues to accrue wharfage charges, it continues to require additional work to prevent deteriorating and all those things do, in fact, prejudice my client.

I have asked him and he is not in favor of a continuance. I don't believe that it is appropriate at this time.

THE COURT: Let me take a very short recess and then I will advise whether we will go forward with this proceeding.

(Recess.)

THE COURT: All right, is it Ms. or Mrs. Keyes?

MS. KEYES: Miss.

THE COURT: Let me ask you to step to the podium one last time, please.

I want to confirm several things. You have represented to the Court this morning that you had assigned all of your right, title and interest to the vessel in question to a Mr.Dolenz.

What is his first name?

MS. KEYES: Bernard.

THE COURT: And you did that on March 15th, 1987.

MS. KEYES: Yes, sir.

THE COURT: You have also, and this is why I have got you up here again. I want to make sure I understand what you have said here in Court this morning.

It's the Court's understanding that Mr. Dolenz does not wish for Mr. Reynolds or his firm to represent Mr. Dolenz here in the proceeding; is that correct?

MS. KEYES: True.

THE COURT: And are you at this time discharging Mr. Reynolds and his firm from further representation of you in this proceeding?

Is there something mysterious about that question?

MS. KEYES: No, sir. I hadn't thought of it. But I guess so. Before the case even came up to docket he had told me that he was resigning himself.

THE COURT: My question still is do you wish for Mr. Reynolds and his firm to continue to represent you?

MS. KEYES: No, sir.

THE COURT: And I believe that you represented to the Court here this morning that you are not authorized by Mr. Dolenz to act as his agent for the purposes of this proceeding; are you?

MS. KEYES: True.

THE COURT: I need to ask you again, because your response to my question about a continuance was, it kind of moved around a little bit and I had some difficulty following it. But did you represent to the Court that Mr. Dolenz authorized you to move for a continuance of this trial?

MS. KEYES: No, we were hoping for a continuance. But we didn't discuss him authorizing me to speak for him.

THE COURT: Thank you very much. That is all.

This Court has its concerns with respect to the eleventh hour assignment that has been represented here in open court by Ms.

Keyes to have taken place between herself and Mr. Dolenz on March 15th, 1987.

However, the Court is not here to rule upon the validity of that assignment except the Court notes for the record the Court's concerns over the good faith actions of this eleventh hour assignment, that is the good faith action between Ms. Keyes and the alleged new owner of the vessel in question, Mr. Bernard Dolenz.

The Court is going to grant Mr. Reynold's motion to withdraw and the Court grants the motion of Lyman H. Reynolds, Jr., Esq., and the law firm of Roberts and Reynolds to withdraw as counsel of record for the Defendant in this action based in particular on the references set forth in the motion to withdraw docket entry number 19.

Mr. Reynolds if you would provide the Court with a proposed order to that effect. And the Court so orders that Mr. Reynolds and his law firm further are discharged from

further representation with respect to the Defendant vessel and with respect to Mrs. Melissa Keyes in this proceeding.

Just so the record is clear, if some reviewing Court has to take a look at this proceeding, assuming arguendo that anything that Ms. Keyes has said here in Court this morning could be construed to be a motion for continuance, the Court is going to deny that motion for continuance.

Once, again, the Court noting its concern for the good faith involved in the eleventh hour activities that have taken place in this matter between Ms. Keyes and Mr. Bernard Dolenz, the Court also notes for the record that there has been no written motion for continuance filed by Mr. Dolenz, the alleged new owner of the vessel, and it is the Court's opinion that Mr. Dolenz has had sufficient time, it now being ten minutes of 12:00 Eastern Standard Time that Mr. Dolenz had sufficient time to have made contact

with the Court's chambers and there has been no such contact and also that Mr. Dolenz has had time to express mail here to the Court any motion for continuance, if he, Mr. Dolenz, was desirous of such.

Ms. Keyes having represented to the Court that Mr. Dolenz is a lawyer, the Court assumes that Mr. Dolenz would be familiar with the customary practice in moving for a continuance as opposed to hoping that there might be a continuance.